

Ryan Q. Keech (SBN 280306)
Ryan.Keech@klgates.com
Gabriel M. Huey (SBN 291608)
Gabriel.Huey@klgates.com
Stacey Chiu (SBN 321345)
stacey.chiu@klgates.com
Rebecca Makitalo (SBN 330258)
rebecca.makitalo@klgates.com
K&L GATES LLP
10100 Santa Monica Boulevard
Eighth Floor
Los Angeles, California 90067
Telephone: +1 310 552 5000
Facsimile: +1 310 552 5001

Attorneys for Defendant
CHECKMATE.COM INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ARJUN VASAN,

Plaintiff,

v.

CHECKMATE.COM, INC.,

Defendant.

CHECKMATE.COM, INC.,

Counterclaim-Plaintiff,

v.

ARJUN VASAN,

Counterclaim-
Defendant.

Case No. 2:25-CV-00765-MEMF-JPR

Hon. Maame Ewusi-Mensah
Frimpong

**DEFENDANT
CHECKMATE.COM, INC.'S
ANSWER TO PLAINTIFF'S
COMPLAINT, AFFIRMATIVE
DEFENSES, AND
COUNTERCLAIMS**

JURY TRIAL DEMANDED

First Amended Complaint Filed:
February 21, 2025

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1 Defendant Checkmate.com, Inc. (“Defendant”) respectfully submits the
2 following Answer to Plaintiff Arjun Vasan’s (“Plaintiff”) First Amended Complaint
3 (the “FAC”). Unless expressly admitted herein, Defendant denies each and every
4 allegation of the FAC pursuant to Rule 8(b)(3) of the Federal Rules of Civil
5 Procedure.

6 **I. INTRODUCTION**

7 1. This paragraph consists of a legal description of Plaintiff’s complaints
8 in this action, and argumentation and subjective characterizations rather than factual
9 allegations. To the extent a response is deemed necessary, Defendant denies the
10 allegations and denies that Plaintiff is entitled to any relief from Defendant.

11 2. Defendant admits that before VoiceBite merged with Defendant in April
12 2024, Plaintiff represented to Defendant that he co-founded VoiceBite Corporation.
13 The remaining allegations in the paragraph consist of argumentation and subjective
14 characterizations rather than factual allegations. To the extent a response is deemed
15 necessary, Defendant denies the remaining allegations.

16 3. This paragraph consists of argumentation and subjective
17 characterizations rather than factual allegations. To the extent a response is deemed
18 necessary, Defendant denies the allegations.

19 4. To the extent there are factual allegations in this paragraph, Defendant
20 is without knowledge or information sufficient to form a belief about their truth and
21 on that basis denies them. The remainder of this paragraph consists of argumentation
22 and subjective characterizations rather than factual allegations. To the extent a
23 response to such allegations is deemed necessary, Defendant denies them.

24 5. This paragraph consists of argumentation and subjective
25 characterizations rather than factual allegations. To the extent a response is deemed
26 necessary, Defendant denies the allegations. The remainder of this paragraph
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1 consists of a legal description of Plaintiff's remedies sought, rather than factual
2 allegations; Defendant denies that Plaintiff is entitled to any relief from Defendant.

3 **II. JURISDICTION**

4 6. The allegations set forth in this paragraph constitute legal conclusions
5 to which no response is required. To the extent a response is deemed necessary,
6 Defendant denies the allegations.

7 7. The allegations set forth in this paragraph constitute legal conclusions
8 to which no response is required. To the extent a response is deemed necessary,
9 Defendant denies the allegations.

10 8. Defendant admits that it is a corporation organized under the laws of
11 Delaware with its principal place of business in New York. Defendant is without
12 knowledge or information sufficient to form a belief as to Plaintiff's citizenship or
13 the amount in controversy, and on that basis denies those allegations. The remainder
14 of this paragraph sets forth legal conclusions regarding subject matter jurisdiction, to
15 which no response is required. To the extent a response is deemed necessary,
16 Defendant denies the allegations.

17 9. The allegations set forth in this paragraph constitute legal conclusions
18 to which no response is required. To the extent a response is deemed necessary,
19 Defendant denies the allegations.

20 **III. VENUE**

21 10. Defendant is without knowledge or information sufficient to form a
22 belief as to Plaintiff's location at the time of his termination, and on that basis denies
23 those allegations. The remainder of this paragraph sets forth legal conclusions
24 regarding venue, to which no response is required. To the extent a response is deemed
25 necessary, Defendant denies the allegations.

1 **IV. PARTIES**

2 11. Defendant admits that Plaintiff was employed by Defendant as Vice
3 President of AI Technology following the merger referenced in the Amended
4 Complaint. Defendant is without knowledge or information sufficient to form a belief
5 as to Plaintiff's domicile or current residence and on that basis denies those
6 allegations.

7 12. Admit.

8 **V. STATEMENT OF FACTS**

9 13. Defendant admits that Michael Bell served as Chief of Strategy, Vishal
10 Agarwal served as Founder and Chief Executive Officer, and Amy Brown served as
11 Vice President of Human Resources for Checkmate during the relevant period. The
12 remainder of this paragraph sets forth legal conclusions, to which no response is
13 required. Except as expressly admitted, Defendant is without knowledge or
14 information sufficient to form a belief as to their truth and denies the remaining
15 allegations in this paragraph.

16 14. Defendant admits that certain VoiceBite team members became
17 employees of Defendant following the merger. Defendant is without knowledge or
18 information sufficient to form a belief as to the truth of the allegations regarding
19 private Slack channels or the candid reactions of co-founders, and on that basis denies
20 those allegations. The remainder consists of argumentation and subjective
21 characterizations, which are denied to the extent a response is required.

22 15. This paragraph purports to quote or summarize certain emails,
23 spreadsheets, and the Letter of Intent. Defendant refers to the documents for their
24 contents, which speak for themselves. Defendant denies the remaining allegations in
25 this paragraph. To the extent the paragraph contains argumentation, legal
26 conclusions, or allegations as to matters outside Defendant's knowledge or
27 information sufficient to form a belief, those allegations are denied.

1 16. Defendant denies the allegation regarding any April 6, 2024 text
2 message from Michael Bell as described in this paragraph. To the extent this
3 paragraph purports to reference or summarize emails or other documents, Defendant
4 refers to those documents for their contents, which speak for themselves. Except as
5 expressly admitted, Defendant denies the remaining allegations in this paragraph,
6 including all argumentation and subjective characterizations.

7 17. To the extent this paragraph purports to reference or summarize the
8 memo from Alan Foster, Defendant refers to the memo for its contents, which speaks
9 for itself. Except as expressly admitted, Defendant denies the remaining allegations
10 in this paragraph, including any subjective characterizations or argumentation.

11 18. Defendant admits that certain counsel were involved in the negotiation
12 of the merger. Defendant is without knowledge or information sufficient to form a
13 belief as to the truth of the allegations regarding the timing of Plaintiff's or his co-
14 founders' retention of counsel, their reliance on post-merger salaries or back pay, or
15 their internal deliberations, and on that basis denies those allegations. The reminder
16 of the paragraph consists of argumentation and subjective characterizations rather
17 than factual allegations. To the extent a response is deemed necessary, Defendant
18 denies the allegations.

19 19. This paragraph consists of argumentation and subjective
20 characterizations rather than factual allegations. Defendant admits that the merger
21 between Checkmate and VoiceBite occurred. Defendant is without knowledge or
22 information sufficient to form a belief as to Plaintiff's alleged state of mind, and on
23 that basis denies those allegations.

24 20. Defendant admits that Defendant employed Plaintiff as Vice President
25 of AI Technology pursuant to the Offer Letter attached as Exhibit B to the FAC.
26 Defendant refers to the Offer Letter for its contents, which speak for itself. To the
27
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1 extent the paragraph contains any inconsistent characterizations or legal conclusions,
2 those are denied.

3 21. Defendant admits that Plaintiff and Defendant entered into a Bonus
4 Agreement, a copy of which is attached as Exhibit C to the FAC. Defendant refers
5 to the Bonus Agreement for its contents, which speak for itself. To the extent the
6 paragraph contains any inconsistent characterizations or legal conclusions, those are
7 denied.

8 22. This paragraph purports to summarize a spreadsheet and payment
9 schedule. Defendant refers to any such document for its contents, which speaks for
10 itself. To the extent a response is deemed necessary, Defendant denies any
11 inconsistent allegations.

12 23. Defendant admits that Plaintiff was assigned to report to Michael Bell
13 and that Plaintiff objected to this reporting structure. Defendant denies that Plaintiff
14 had any right to select his supervisor or reporting structure, or that any prior threats
15 of termination were made during negotiations. To the extent this paragraph contains
16 subjective characterizations or argument, those are denied.

17 24. Defendant admits that Plaintiff raised questions regarding the “Bring
18 Your Own Device” policy. Except as expressly admitted, Defendant denies the
19 remaining allegations in this paragraph, including all argumentation and subjective
20 characterizations.

21 25. Defendant admits that all back pay amounts owed to Plaintiff were paid
22 in full. Defendant denies that Agarwal or Bell made excuses to delay payment or
23 engaged in any wrongful conduct as alleged in this paragraph. Except as expressly
24 admitted, Defendant denies the remaining allegations in this paragraph, including all
25 argumentation and subjective characterizations.

26 26. Defendant admits that Plaintiff raised work-related issues in public
27 Slack channels rather than privately. Defendant is without knowledge or information
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1 sufficient to form a belief as to Plaintiff's internal state of mind or motivations and
2 on that basis denies those allegations. Except as expressly admitted, Defendant
3 denies the remaining allegations in this paragraph.

4 27. Defendant admits that all back pay amounts owed to Plaintiff were paid
5 in full. This paragraph also consists of argumentation and subjective
6 characterizations rather than factual allegations. To the extent a response is deemed
7 necessary, Defendant denies the allegations.

8 28. Defendant admits that it closed a Series B round of financing in or
9 around July 2024. Defendant denies the allegation that the round was for \$10 million.
10 Except as expressly admitted, Defendant denies the remaining allegations in this
11 paragraph.

12 29. Defendant admits that Plaintiff's retention bonus had not been triggered
13 and that the fundraiser was structured in two tranches. Defendant denies any
14 inconsistent characterizations or legal conclusions, including Plaintiff's
15 interpretation of the Bonus Agreement, and denies the remaining allegations in this
16 paragraph.

17 30. Defendant denies the allegations in this paragraph, including the
18 assertion that Defendant's investor suggested the tranche structure to delay bonus
19 payments, that Plaintiff was threatened with termination for making demands, and
20 that any promises were made regarding bonus acceleration as alleged. Plaintiff
21 received written and verbal warnings due to disruptive and unprofessional workplace
22 conduct, not for asserting any purported contractual rights. Defendant further denies
23 any implication of wrongdoing or improper conduct by Defendant or its
24 representatives.

25 31. This paragraph references or summarizes a "partial bonus acceleration"
26 document. Defendant refers to any such document for its contents, which speaks for
27 itself. To the extent a response is deemed necessary, Defendant denies any
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1 inconsistent allegations. Defendant is without knowledge or information sufficient
2 to form a belief as to Plaintiff's internal state of mind or motivations and on that basis
3 denies those allegations.

4 32. This paragraph references or summarizes a public announcement
5 document. Defendant refers to any such document for its contents, which speaks for
6 itself.

7 33. Admitted as to the inclusion of a performance bonus provision in
8 Plaintiff's Offer Letter. Defendant refers to the Offer Letter for its contents, which
9 speaks for itself. To the extent the paragraph contains any inconsistent
10 characterizations or legal conclusions, those are denied.

11 34. This paragraph consists of argumentation and subjective
12 characterizations rather than factual allegations. To the extent a response is deemed
13 necessary, Defendant denies the allegations.

14 35. This paragraph consists of argumentation and subjective
15 characterizations rather than factual allegations. To the extent a response is deemed
16 necessary, Defendant denies the allegations.

17 36. Admitted as to Chris Lam commencing a leave of absence on or about
18 September 24, 2024, and that CEO Vishal Agarwal communicated to the team
19 regarding a customer demo scheduled for October 23, 2024. Denied as to any
20 subjective characterizations or implications of coincidence or significance.

21 37. This paragraph consists of argumentation and subjective
22 characterizations rather than factual allegations. To the extent a response is deemed
23 necessary, Defendant denies the allegations.

24 38. This paragraph consists of argumentation and subjective
25 characterizations rather than factual allegations. To the extent a response is deemed
26 necessary, Defendant denies the allegations.

1 39. This paragraph consists of argumentation and subjective
2 characterizations rather than factual allegations. To the extent a response is deemed
3 necessary, Defendant denies the allegations.

4 40. Defendant is without knowledge or information sufficient to form a
5 belief as to the truth of the allegations regarding Plaintiff's inpatient treatment,
6 symptoms, or the circumstances of his medical care, and on that basis denies those
7 allegations. Defendant admits that a medical certification form was received from
8 Plaintiff's medical provider but refers to that form for its contents, which speaks for
9 itself.

10 41. To the extent this paragraph purports to quote or summarize Defendant's
11 Employee Handbook and Offer Letter, Defendant refers to those documents for their
12 contents, which speak for themselves. The remainder consists of argumentation and
13 subjective characterizations rather than factual allegations. To the extent a response
14 is deemed necessary, Defendant denies the allegations.

15 42. This paragraph purports to reference Defendant's email
16 communications and federal regulations. Defendant refers to any such email and to
17 29 C.F.R. § 825.300 for their contents, which speak for themselves. To the extent a
18 response is deemed necessary, Defendant denies any inconsistent allegations.

19 43. This paragraph consists of argumentation and subjective
20 characterizations rather than factual allegations, and on that basis denies those
21 allegations.

22 44. This paragraph consists of argumentation and subjective
23 characterizations rather than factual allegations. Defendant is without knowledge or
24 information sufficient to form a belief as to the truth of the allegations in this
25 paragraph, and on that basis denies them.

26 45. This paragraph consists in part of argumentation and subjective
27 characterizations and, to the extent it contains factual allegations, those are denied.
28

1 46. This paragraph purports to reference or quote an email from Bell
2 regarding bonus payments. Defendant refers to any such email for its contents, which
3 speak for themselves. To the extent a response is deemed necessary, Defendant
4 denies any inconsistent allegations.

5 47. This paragraph purports to reference or quote an email from HR Brown
6 regarding health coverage. This paragraph also consists of argumentation and
7 subjective characterizations rather than factual allegations. Defendant admits that
8 Plaintiff communicated with Defendant about health insurance coverage, and refers
9 to any such communications, including emails, for their contents, which speak for
10 themselves. Defendant is without knowledge or information sufficient to form a
11 belief as to Plaintiff's intent or his alleged offer to seek medical clearance and on that
12 basis denies those allegations.

13 48. This paragraph purports to reference or quote a Zoom meeting and email
14 communications. Defendant refers to the referenced meeting and communications
15 for their contents, which speak for themselves. To the extent a response is deemed
16 necessary, Defendant denies any inconsistent allegations.

17 49. This paragraph purports to reference Plaintiff's email communications
18 regarding resignation. This paragraph also consists of argumentation and subjective
19 characterizations rather than factual allegations. Defendant admits that Plaintiff sent
20 emails to Defendant in connection with his separation from employment, and refers
21 to those emails for their contents, which speak for themselves. Defendant is without
22 knowledge or information sufficient to form a belief as to Plaintiff's emotional state
23 or subjective intent and on that basis denies those allegations.

24 50. This paragraph references Defendant's Notice of Claim. Defendant
25 refers to the Notice for its contents, which speak for themselves. The remainder of
26 this paragraph consists of argumentation and subjective characterizations rather than
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1 factual allegations. To the extent a response is deemed necessary, Defendant denies
2 the allegations.

3 51. This paragraph references a second Notice from Defendant. Defendant
4 refers to the Notice for its contents, which speak for themselves. The remainder of
5 the paragraph consists of argumentation and subjective characterizations rather than
6 factual allegations. To the extent a response is deemed necessary, Defendant denies
7 the allegations.

8 52. This paragraph references a third Notice from Defendant. Defendant
9 refers to the Notice for its contents, which speak for themselves. The remainder of
10 the paragraph consists of argumentation and subjective characterizations rather than
11 factual allegations. To the extent a response is deemed necessary, Defendant denies
12 the allegations.

13 53. This paragraph purports to reference a Zoom meeting recording and
14 summary. Defendant refers to the recording and summary for their contents, which
15 speak for themselves. This paragraph also consists of argumentation and subjective
16 characterizations rather than factual allegations. To the extent a response is deemed
17 necessary, Defendant denies the allegations.

18 54. This paragraph consists of argumentation and subjective
19 characterizations rather than factual allegations. To the extent a response is deemed
20 necessary, Defendant denies the allegations.

21 55. This paragraph consists of argumentation and subjective
22 characterizations rather than factual allegations. Defendant admits that CEO Agarwal
23 discussed certain emails in connection with Plaintiff's employment and separation,
24 and refers to any such statements or emails for their contents, which speak for
25 themselves. Defendant is without knowledge or information sufficient to form a
26 belief as to Agarwal's or Plaintiff's subjective intent or privacy concerns, and on that
27 basis denies those allegations.

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1 56. This paragraph purports to reference a recording and alleged statements
2 made therein. Defendant refers to the recording for its contents, which speak for
3 themselves. This paragraph also consists of argumentation and subjective
4 characterizations rather than factual allegations. To the extent a response is deemed
5 necessary, Defendant denies the allegations.

6 57. Defendant is without knowledge or information sufficient to form a
7 belief about the truth of the allegations in this paragraph. This paragraph also consists
8 of argumentation and subjective characterizations rather than factual allegations. To
9 the extent a response is deemed necessary, Defendant denies the allegations.

10 58. This paragraph consists of argumentation and subjective
11 characterizations rather than factual allegations. To the extent a response is deemed
12 necessary, Defendant denies the allegations.

13 59. This paragraph consists of argumentation and subjective
14 characterizations rather than factual allegations. Defendant is without knowledge or
15 information sufficient to form a belief as to Plaintiff's current or ongoing emotional,
16 reputational, or economic harm, and on that basis denies those allegations.

17 **CLAIM I. Violation of the Family and Medical Leave Act (29 U.S.C. §**
18 **2601 et seq.)**

19 60. The allegations set forth in this paragraph constitute legal conclusions,
20 to which no response is required. To the extent a response is deemed necessary,
21 Defendant denies the allegations.

22 61. The allegations set forth in this paragraph constitute legal conclusions,
23 to which no response is required. To the extent a response is deemed necessary,
24 Defendant denies the allegations.

25 62. The allegations set forth in this paragraph constitute legal conclusions,
26 to which no response is required. To the extent a response is deemed necessary,
27 Defendant denies the allegations.
28

1 63. The allegations set forth in this paragraph constitute legal conclusions,
2 to which no response is required. To the extent a response is deemed necessary,
3 Defendant denies the allegations.

4 **CLAIM II. Violation of the California Family Rights Act (Cal. Gov.**
5 **Code § 12945.2)**

6 64. The allegations set forth in this paragraph constitute legal conclusions,
7 to which no response is required. To the extent a response is deemed necessary,
8 Defendant denies the allegations.

9 65. This paragraph purports to summarize statutory eligibility requirements
10 and Defendant's claimed eligibility under CFRA. Defendant refers to the statute and
11 any referenced documents for their contents, which speak for themselves. The
12 allegations set forth in this paragraph also constitute legal conclusions, to which no
13 response is required. To the extent a response is deemed necessary, Defendant denies
14 the allegations.

15 66. The allegations set forth in this paragraph constitute legal conclusions,
16 to which no response is required. To the extent a response is deemed necessary,
17 Defendant denies the allegations.

18 67. The allegations set forth in this paragraph constitute legal conclusions,
19 to which no response is required. To the extent a response is deemed necessary,
20 Defendant denies the allegations.

21 **CLAIM III. Retaliation (Cal. Labor Code § 1102.5)**

22 68. The allegations set forth in this paragraph constitute legal conclusions,
23 to which no response is required. To the extent a response is deemed necessary,
24 Defendant denies the allegations.

25 69. This paragraph purports to summarize statutory eligibility requirements
26 and Defendant's claimed eligibility under CFRA. Defendant refers to the statute and
27 any referenced documents for their contents, which speak for themselves. The
28

1 allegations set forth in this paragraph also constitute legal conclusions, to which no
2 response is required. To the extent a response is deemed necessary, Defendant denies
3 the allegations.

4 70. The allegations set forth in this paragraph constitute legal conclusions,
5 to which no response is required. To the extent a response is deemed necessary,
6 Defendant denies the allegations.

7 71. The allegations set forth in this paragraph constitute legal conclusions,
8 to which no response is required. To the extent a response is deemed necessary,
9 Defendant denies the allegations.

10 72. This paragraph purports to list and summarize statutory provisions and
11 legal requirements. Defendant refers to the statutes for their contents, which speak
12 for themselves. The allegations set forth in this paragraph also constitute legal
13 conclusions, to which no response is required. To the extent a response is deemed
14 necessary, Defendant denies the allegations.

15 73. The allegations set forth in this paragraph constitute legal conclusions,
16 to which no response is required. To the extent a response is deemed necessary,
17 Defendant denies the allegations.

18 74. The allegations set forth in this paragraph constitute legal conclusions,
19 to which no response is required. To the extent a response is deemed necessary,
20 Defendant denies the allegations.

21 **CLAIM IV. Wrongful Termination in Violation of Public Policy**

22 75. The allegations set forth in this paragraph constitute legal conclusions,
23 to which no response is required. To the extent a response is deemed necessary,
24 Defendant denies the allegations.

25 76. This paragraph purports to reference and summarize statutes and public
26 policy. Defendant refers to any such statutes for their contents, which speak for
27 themselves. The allegations set forth in this paragraph also constitute legal
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1 conclusions, to which no response is required. To the extent a response is deemed
2 necessary, Defendant denies the allegations.

3 77. This paragraph purports to summarize the terms of a Non-Solicitation
4 clause and the Employee Handbook. Defendant refers to the clause and Employee
5 Handbook for their contents, which speak for themselves. The allegations set forth in
6 this paragraph also constitute legal conclusions, to which no response is required. To
7 the extent a response is deemed necessary, Defendant denies the allegations.

8 78. This paragraph purports to summarize the terms of a Non-
9 Disparagement clause. Defendant refers to the clause for its contents, which speak
10 for themselves. The allegations set forth in this paragraph also constitute legal
11 conclusions, to which no response is required. To the extent a response is deemed
12 necessary, Defendant denies the allegations.

13 79. The allegations set forth in this paragraph constitute legal conclusions
14 and argumentation or subjective characterizations, to which no response is required.
15 To the extent a response is deemed necessary, Defendant denies the allegations.

16 80. The allegations set forth in this paragraph constitute legal conclusions
17 and argumentation or subjective characterizations, to which no response is required.
18 To the extent a response is deemed necessary, Defendant denies the allegations.

19 81. The allegations set forth in this paragraph constitute legal conclusions,
20 to which no response is required. To the extent a response is deemed necessary,
21 Defendant denies the allegations.

22 **CLAIM V. Constructive Discharge in Violation of Public Policy**
23 **(in the Alternative)**

24 82. The allegations set forth in this paragraph constitute legal conclusions,
25 to which no response is required. To the extent a response is deemed necessary,
26 Defendant denies the allegations.

1 83. The allegations set forth in this paragraph constitute legal conclusions
2 and argumentation or subjective characterizations, to which no response is required.
3 To the extent a response is deemed necessary, Defendant denies the allegations.

4 **CLAIM VI. Wage Theft (Cal. Labor Code §§ 200, 201, 204, 221, 226,**
5 **2802)**

6 84. The allegations set forth in this paragraph constitute legal conclusions,
7 to which no response is required. To the extent a response is deemed necessary,
8 Defendant denies the allegations.

9 85. This paragraph purports to reference and summarize various California
10 Labor Code provisions. Defendant refers to the Labor Code for its contents, which
11 speak for themselves. The allegations set forth in this paragraph also constitute legal
12 conclusions, to which no response is required. To the extent a response is deemed
13 necessary, Defendant denies the allegations.

14 86. This paragraph purports to reference Labor Code § 2802. Defendant
15 refers to the statute for its contents, which speaks for itself. The allegations set forth
16 in this paragraph also constitute legal conclusions, to which no response is required.
17 To the extent a response is deemed necessary, Defendant denies the allegations.

18 87. The allegations set forth in this paragraph constitute legal conclusions
19 and argumentation or subjective characterizations, to which no response is required.
20 To the extent a response is deemed necessary, Defendant denies the allegations.

21 88. This paragraph purports to reference and summarize California Labor
22 Code § 221 and related case law. Defendant refers to the Labor Code and cited cases
23 for their contents, which speak for themselves. The allegations set forth in this
24 paragraph also constitute legal conclusions, to which no response is required. To the
25 extent a response is deemed necessary, Defendant denies the allegations.

26 89. This paragraph purports to reference Labor Code § 203. Defendant
27 refers to the statute for its contents, which speaks for itself. The allegations set forth
28

1 in this paragraph also constitute legal conclusions, to which no response is required.
2 To the extent a response is deemed necessary, Defendant denies the allegations.

3 90. This paragraph purports to request legal declarations and statutory
4 penalties. Defendant refers to the statutes for their contents, which speak for
5 themselves, and otherwise denies any entitlement to relief. The allegations set forth
6 in this paragraph also constitute legal conclusions, to which no response is required.

7 **CLAIM VII. Breach of Contract**

8 91. The allegations set forth in this paragraph constitute legal conclusions,
9 to which no response is required. To the extent a response is deemed necessary,
10 Defendant denies the allegations.

11 92. Defendant admits that Plaintiff and Defendant entered into an Offer
12 Letter and a Bonus Agreement, and that those documents set forth the terms of
13 Plaintiff's employment and bonus eligibility. Defendant refers to the Offer Letter and
14 Bonus Agreement for their contents, which speak for themselves. To the extent the
15 paragraph contains any inconsistent characterizations, interpretations, or legal
16 conclusions, those are denied.

17 93. The allegations set forth in this paragraph constitute legal conclusions
18 and subjective characterizations, to which no response is required. To the extent a
19 response is deemed necessary, Defendant denies the allegations.

20 94. This paragraph purports to summarize and interpret the Bonus
21 Agreement. Defendant refers to the Bonus Agreement for its contents, which speak
22 for themselves. The allegations set forth in this paragraph also constitute legal
23 conclusions, to which no response is required. To the extent a response is deemed
24 necessary, Defendant denies the allegations.

25 95. This paragraph purports to summarize the Offer Letter, Bonus
26 Agreement, and Non-Disparagement clause. Defendant refers to these documents for
27 their contents, which speak for themselves. The allegations set forth in this paragraph
28

1 also constitute legal conclusions, to which no response is required. To the extent a
2 response is deemed necessary, Defendant denies the allegations.

3 96. This paragraph purports to calculate damages based on the terms of
4 contracts. Defendant refers to the contracts for their contents, which speak for
5 themselves. The allegations set forth in this paragraph also constitute legal
6 conclusions, to which no response is required. To the extent a response is deemed
7 necessary, Defendant denies the allegations.

8 **CLAIM VIII. Unjust Enrichment (in the Alternative)**

9 97. The allegations set forth in this paragraph constitute legal conclusions,
10 to which no response is required. To the extent a response is deemed necessary,
11 Defendant denies the allegations.

12 98. The allegations set forth in this paragraph constitute legal conclusions,
13 to which no response is required. To the extent a response is deemed necessary,
14 Defendant denies the allegations.

15 99. Defendant denies the allegations in this paragraph. To the extent this
16 paragraph refers to an email, Defendant refers to the document for its contents, which
17 speaks for itself.

18 100. To the extent this paragraph refers to an email, Defendant refers to the
19 document for its contents, which speaks for itself. Defendant denies any inconsistent
20 allegations.

21 101. Defendant is without knowledge or information sufficient to form a
22 belief as to the truth of the allegations in this paragraph, and on that basis denies
23 them.

24 102. The allegations set forth in this paragraph constitute legal conclusions,
25 to which no response is required. To the extent a response is deemed necessary,
26 Defendant denies the allegations.

1 103. The allegations set forth in this paragraph constitute legal conclusions,
2 to which no response is required. To the extent a response is deemed necessary,
3 Defendant denies the allegations.

4 **CLAIM IX. Promissory Fraud and Estoppel**

5 104. The allegations set forth in this paragraph constitute legal conclusions,
6 to which no response is required. To the extent a response is deemed necessary,
7 Defendant denies the allegations.

8 105. This paragraph purports to quote or summarize alleged employment
9 promises and contract terms. Defendant refers to the documents for their contents,
10 which speak for themselves. The allegations set forth in this paragraph also constitute
11 legal conclusions, to which no response is required. To the extent a response is
12 deemed necessary, Defendant denies the allegations.

13 106. The allegations set forth in this paragraph constitute legal conclusions,
14 to which no response is required. To the extent a response is deemed necessary,
15 Defendant denies the allegations.

16 107. The allegations set forth in this paragraph constitute legal conclusions,
17 to which no response is required. To the extent a response is deemed necessary,
18 Defendant denies the allegations.

19 108. The allegations set forth in this paragraph constitute legal conclusions,
20 to which no response is required. To the extent a response is deemed necessary,
21 Defendant denies the allegations.

22 109. This paragraph purports to summarize the application of California law
23 to certain agreements. Defendant refers to the cited law and agreements for their
24 contents, which speak for themselves. The allegations set forth in this paragraph also
25 constitute legal conclusions, to which no response is required. To the extent the
26 paragraph contains any inconsistent characterizations or disputed interpretations,
27 those are denied.
28

1 110. This paragraph purports to request a declaration regarding the
2 enforceability of contract terms. Defendant refers to the contracts and any statutes for
3 their contents, which speak for themselves. The allegations set forth in this paragraph
4 also constitute legal conclusions, to which no response is required. To the extent the
5 paragraph contains any inconsistent characterizations or disputed interpretations
6 those are denied.

7 **CLAIM X. CIVIL CONSPIRACY:**

8 111. The allegations set forth in this paragraph constitute legal conclusions,
9 to which no response is required. To the extent a response is deemed necessary,
10 Defendant denies the allegations.

11 112. The allegations set forth in this paragraph constitute legal conclusions,
12 to which no response is required. To the extent a response is deemed necessary,
13 Defendant denies the allegations.

14 113. This paragraph purports to reference and summarize the LOI's "No
15 Shop" clause and the context of merger negotiations. Defendant refers to the LOI for
16 its contents, which speaks for itself. The allegations set forth in this paragraph also
17 constitute legal conclusions, to which no response is required. To the extent a
18 response is deemed necessary, Defendant denies the allegations.

19 114. This paragraph purports to quote or summarize California Business and
20 Professions Code § 17200, which speaks for itself. Defendant denies the remaining
21 allegations.

22 115. The allegations set forth in this paragraph constitute legal conclusions
23 and subjective characterizations, to which no response is required. To the extent a
24 response is deemed necessary, Defendant denies the allegations.

25 116. This paragraph purports to reference and summarize contract provisions
26 and California Civil Code. Defendant refers to the contracts and statutes for their
27 contents, which speak for themselves. The allegations set forth in this paragraph also
28

1 constitute legal conclusions, to which no response is required. To the extent a
2 response is deemed necessary, Defendant denies the allegations.

3 117. This paragraph purports to reference and summarize indemnification
4 provisions and related documents. Defendant refers to those provisions and
5 documents for their contents, which speak for themselves. The allegations set forth
6 in this paragraph also constitute legal conclusions, to which no response is required.
7 To the extent a response is deemed necessary, Defendant denies the allegations.

8 118. This paragraph purports to quote or summarize statutes or case law,
9 which speak for themselves. The allegations set forth in this paragraph constitute
10 legal conclusions, to which no response is required. To the extent a response is
11 deemed necessary, Defendant denies the allegations.

12 119. The allegations set forth in this paragraph constitute legal conclusions
13 and argumentation or subjective characterizations, to which no response is required.
14 To the extent a response is deemed necessary, Defendant denies the allegations.

15 120. The allegations set forth in this paragraph constitute legal conclusions,
16 to which no response is required. To the extent a response is deemed necessary,
17 Defendant denies the allegations.

18 121. The allegations set forth in this paragraph constitute legal conclusions,
19 to which no response is required. To the extent a response is deemed necessary,
20 Defendant denies the allegations.

21 122. The allegations set forth in this paragraph constitute legal conclusions,
22 to which no response is required. To the extent a response is deemed necessary,
23 Defendant denies the allegations.

24 123. This paragraph purports to reference various statutory provisions
25 relating to civil and criminal liability. Defendant refers to the statutes for their
26 contents, which speak for themselves. The allegations set forth in this paragraph also
27
28

1 constitute legal conclusions, to which no response is required. To the extent a
2 response is deemed necessary, Defendant denies the allegations.

3 124. This paragraph purports to reference indemnification provisions, the
4 merger agreement, the Offer Letter, and the Bonus Agreement. Defendant refers to
5 these agreements for their contents, which speak for themselves. The allegations set
6 forth in this paragraph also constitute legal conclusions and argumentation or
7 subjective characterizations, to which no response is required. To the extent a
8 response is deemed necessary, Defendant denies the allegations.

9 125. The allegations set forth in this paragraph constitute legal conclusions
10 and argumentation or subjective characterizations, to which no response is required.
11 To the extent a response is deemed necessary, Defendant denies the allegations.

12 126. This paragraph purports to request punitive damages under Cal. Civ.
13 Code § 3294. Defendant refers to the statute for its contents, which speaks for itself,
14 and otherwise denies any entitlement to such damages. The allegations set forth in
15 this paragraph also constitute legal conclusions and argumentation or subjective
16 characterizations, to which no response is required. To the extent a response is
17 deemed necessary, Defendant denies the allegations.

18 127. This paragraph purports to request various declarations and findings
19 under California Civil and Penal Codes. Defendant refers to the cited codes for their
20 contents, which speak for themselves. The allegations set forth in this paragraph also
21 constitute legal conclusions, to which no response is required. To the extent a
22 response is deemed necessary, Defendant denies the allegations.

23 **VII. REQUEST FOR RELIEF**

24 128. The allegations set forth in this paragraph constitute legal conclusions,
25 to which no response is required. To the extent a response is deemed necessary,
26 Defendant denies the allegations.

1 129. The allegations set forth in this paragraph constitute legal conclusions,
2 to which no response is required. To the extent a response is deemed necessary,
3 Defendant denies the allegations.

4 130. The allegations set forth in this paragraph constitute legal conclusions,
5 to which no response is required. To the extent a response is deemed necessary,
6 Defendant denies the allegations.

7 131. The allegations set forth in this paragraph constitute legal conclusions,
8 to which no response is required. To the extent a response is deemed necessary,
9 Defendant denies the allegations.

10 132. The allegations set forth in this paragraph constitute legal conclusions,
11 to which no response is required. To the extent a response is deemed necessary,
12 Defendant denies the allegations.

13 133. The allegations set forth in this paragraph constitute legal conclusions,
14 to which no response is required. To the extent a response is deemed necessary,
15 Defendant denies the allegations.

16 134. The allegations set forth in this paragraph constitute legal conclusions,
17 to which no response is required. To the extent a response is deemed necessary,
18 Defendant denies the allegations.

19 135. The allegations set forth in this paragraph constitute legal conclusions,
20 to which no response is required. To the extent a response is deemed necessary,
21 Defendant denies the allegations.

22 136. The allegations set forth in this paragraph constitute legal conclusions,
23 to which no response is required. To the extent a response is deemed necessary,
24 Defendant denies the allegations.

25 137. The allegations set forth in this paragraph constitute legal conclusions,
26 to which no response is required. To the extent a response is deemed necessary,
27 Defendant denies the allegations.
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AFFIRMATIVE OR OTHER DEFENSES

Defendant asserts the following affirmative or other defenses on information and belief. In so doing, Defendant does not assume any burden of pleading, proof, persuasion, or production on such defenses where such burden would otherwise fall on Plaintiff. Additionally, Defendant's affirmative or other defenses are asserted in the alternative, and none of them constitute an admission of liability or that Plaintiff is entitled to any relief.

FIRST AFFIRMATIVE OR OTHER DEFENSE

(Failure to State a Claim)

As a separate and independent affirmative or other defense to Plaintiff's FAC and each purported cause of action therein, Defendant alleges that each and every cause of action in Plaintiff's FAC fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE OR OTHER DEFENSE

(Failure to Exhaust Administrative Remedies)

As a separate and independent affirmative or other defense to Plaintiff's FAC and each purported cause of action therein, Defendant alleges that Plaintiff has failed to make full and proper use of and failed to exhaust his administrative remedies and procedures provided in the Labor Code section 98.7, *et seq.*

THIRD AFFIRMATIVE OR OTHER DEFENSE

(Statute of Limitations)

As a separate and independent affirmative or other defense to Plaintiff's FAC and each purported cause of action therein, Defendant alleges that Plaintiff's claims are barred by the applicable statutes of limitations, including, but not limited to, California Code of Civil Procedure sections 337, 338, 339, and 340, 29 U.S.C. § 2617(c).

FOURTH AFFIRMATIVE OR OTHER DEFENSE

(Waiver)

As a separate and independent affirmative or other defense to Plaintiff's FAC and each purported cause of action therein, Defendant alleges that by reason of his own actions, Plaintiff has waived any right to seek damages pursuant to any purported cause of action stated against Defendant.

FIFTH AFFIRMATIVE OR OTHER DEFENSE

(Estoppel)

As a separate and independent affirmative or other defense to Plaintiff's FAC and each purported cause of action therein, Defendant alleges that Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of estoppel.

SIXTH AFFIRMATIVE OR OTHER DEFENSE

(Unclean Hands)

As a separate and independent affirmative or other defense to Plaintiff's FAC and each purported cause of action therein, Defendant alleges that Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of unclean hands.

SEVENTH AFFIRMATIVE OR OTHER DEFENSE

(Failure to Mitigate Damages)

As a separate and independent affirmative or other defense to Plaintiff's FAC and each purported cause of action therein, Defendant alleges that if Plaintiff sustained damages by reason of the allegations in the FAC, which allegations are denied, then Plaintiff may not recover for such damages because by his own acts and omissions, he has failed to properly mitigate such damages.

EIGHTH AFFIRMATIVE OR OTHER DEFENSE

(No Claim for Damages)

As a separate and independent affirmative or other defense to Plaintiff's FAC and each purported cause of action therein, Defendant alleges that Plaintiff has not

1 sustained any damages as a consequence of the conduct alleged in his FAC and can
2 state no claim for damages based thereon.

3 **NINTH AFFIRMATIVE OR OTHER DEFENSE**

4 (Lack of Causation)

5 As a separate and independent affirmative or other defense to Plaintiff's FAC
6 and each purported cause of action therein, Defendant alleges that to the extent
7 Plaintiff has incurred any damages, which Defendant expressly denies, such alleged
8 damages were not proximately or legally caused by Defendant.

9 **TENTH AFFIRMATIVE OR OTHER DEFENSE**

10 (Substantial Compliance)

11 As a separate and independent affirmative or other defense to Plaintiff's FAC
12 and each purported cause of action therein, Defendant alleges that Plaintiff's claim
13 for damages fails because, to the extent—which Defendant denies—that it did not
14 fully comply with the requirements of any particular California Labor Code
15 provision or contract, Defendant has substantially complied with the requirements
16 of such statute or contract such that the imposition of damages would be improper.

17 **ELEVENTH AFFIRMATIVE OR OTHER DEFENSE**

18 (At-Will Employment)

19 As a separate and independent affirmative or other defense to Plaintiff's FAC
20 and each purported cause of action therein, Defendant alleges that Plaintiff's claims
21 fail because each Plaintiff's employment was terminable at the will of either
22 Plaintiff or Defendant under California Labor Code Section 2922.

23 **TWELFTH AFFIRMATIVE OR OTHER DEFENSE**

24 (No Attorneys' Fees)

25 As a separate and independent affirmative or other defense to Plaintiff's FAC
26 and each purported cause of action therein, Defendant alleges that Plaintiff can state
27 no claim for attorneys' fees against Defendant.
28

THIRTEENTH AFFIRMATIVE OR OTHER DEFENSE

(Avoiding and/or Secreting)

As a separate and independent affirmative or other defense to Plaintiff's FAC and each purported cause of action therein, or some of them, are barred to the extent that Plaintiff secreted or absented himself or the work purportedly performed without notice to Defendant, to avoid payment of wages, thereby relieving Defendant of liability for damages or penalties under the California Labor Code.

FOURTEENTH AFFIRMATIVE OR OTHER DEFENSE

(No Impermissible Factors)

As a separate and independent affirmative or other defense to Plaintiff's FAC and each purported cause of action therein, Defendant alleges that Plaintiff's claim is barred in whole or in part because even if Defendant was found to have considered any impermissible factors in any decisions or action with respect to Plaintiff, which Defendant denies, no such decisions were motivated by any impermissible factors.

FIFTEENTH AFFIRMATIVE OR OTHER DEFENSE

(Failure to Support Claim for Punitive Damages)

As a separate and independent affirmative or other defense to Plaintiff's FAC and each purported cause of action therein, Defendant alleges that Plaintiff fails to state facts sufficient to support a claim for punitive damages against Defendant.

SIXTEENTH AFFIRMATIVE OR OTHER DEFENSE

(Constitutional Limit on Punitive Damages)

As a separate and independent affirmative or other defense to Plaintiff's FAC and each purported cause of action therein, Defendant alleges that Plaintiff's claims for punitive damages are barred by the contract clause (Article I, Section 10, clause 1), the due process clause (Fifth Amendment, Fourteenth Amendment, Section 1), and the excessive fines clause (Eighth Amendment) of the United States

1 Constitution, and the corresponding provisions of the Constitution of the State of
2 California.

3 **SEVENTEENTH AFFIRMATIVE OR OTHER DEFENSE**

4 (Punitive Damages - No Ratification)

5 As a separate and independent affirmative or other defense to Plaintiff's FAC
6 and each purported cause of action therein, Defendant alleges that Plaintiff's claims
7 for punitive damages are barred in whole or in part because even if Defendant's
8 alleged conduct rose to the level of oppression, fraud, or malice, which Defendant
9 denies, such conduct was prohibited by Defendant's policies and was not
10 committed, countenanced, ratified, or approved by an officer, director, or managing
11 agent of Defendant.

12 **EIGHTEENTH AFFIRMATIVE OR OTHER DEFENSE**

13 (Failure to Utilize Preventative/Corrective Measures; Avoidable Consequences)

14 As a separate and independent affirmative or other defense to Plaintiff's FAC
15 and each purported cause of action therein, Defendant alleges that it took
16 reasonable preventative and corrective measures, including having proper FMLA
17 and CFRA leave policies and anti-retaliation policies and procedures in place, that
18 Plaintiff unreasonably failed to utilize the preventative and corrective measures that
19 Defendant provided, and reasonable use by Plaintiff of Defendant's procedures
20 would have prevented at least some of the harm that Plaintiff alleges he suffered,
21 which allegations Defendant denies, and Plaintiff's alleged damages should be
22 limited or reduced accordingly.

23 **NINETEENTH AFFIRMATIVE OR OTHER DEFENSE**

24 (Collateral Estoppel and Res Judicata)

25 As a separate and independent affirmative or other defense to Plaintiff's FAC
26 and each purported cause of action therein, Defendant alleges that the FAC, and
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1 each and every cause of action therein, are barred by the doctrines of res judicata
2 and collateral estoppel as to Plaintiff.

3 **TWENTIETH AFFIRMATIVE OR OTHER DEFENSE**

4 (Parol Evidence Rule)

5 As a separate and independent affirmative or other defense to Plaintiff's FAC
6 and each purported cause of action therein, Defendant alleges that any written
7 agreement between the parties was intended to be the full agreement between the
8 parties, and that the Plaintiff cannot present any evidence not in writing to establish
9 any terms of the contract not in the written agreement.

10 **TWENTY-FIRST AFFIRMATIVE OR OTHER DEFENSE**

11 (Laches)

12 As a separate and independent affirmative or other defense to Plaintiff's FAC
13 and each purported cause of action therein, Defendant alleges that due to Plaintiff's
14 tardiness in asserting his purported rights to recover, Plaintiff's claims should be
15 barred by the equitable doctrine of laches.

16 **TWENTY-SECOND AFFIRMATIVE OR OTHER DEFENSE**

17 (Breach of Contract by Plaintiff/Full Performance of Defendant)

18 As a separate and independent defense to Plaintiff's FAC and each purported
19 cause of action therein, Defendant alleges that Plaintiff failed to comply with the
20 terms of any alleged contract, though Defendant performed in full, and thus
21 Plaintiff may not recover under such contract.

22 **TWENTY-THIRD AFFIRMATIVE OR OTHER DEFENSE**

23 (Cal. Labor Code §§ 2854 and 2856)

24 As a separate and independent affirmative or other defense to Plaintiff's FAC
25 and each purported cause of action therein, Defendant alleges that Plaintiff's causes
26 of action are barred under California Labor Code sections 2854 and 2856,
27 respectively, in that Plaintiff failed to use ordinary care and diligence in the
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1 performance of his duties and failed to comply substantially with the reasonable
2 directions of his employer.

3 **TWENTY-FOURTH AFFIRMATIVE OR OTHER DEFENSE**

4 (No Willfulness/Good Faith)

5 As a separate and independent affirmative or other defense to Plaintiff's FAC
6 and each purported cause of action therein, Defendant alleges that no penalty or
7 liability under the California Labor Code, including without limitation sections 203
8 or 226, could be appropriate because, at all relevant times, Defendant did not
9 willfully, knowingly or intentionally fail to comply with the compensation
10 provisions of the California Labor Code, but rather acted in good faith and had
11 reasonable grounds for believing that it had not violated those provisions.

12 **TWENTY-FIFTH AFFIRMATIVE OR OTHER DEFENSE**

13 (Payment)

14 As a separate and independent affirmative or other defense to Plaintiff's FAC
15 and each purported cause of action therein, Defendant alleges that Plaintiff was paid
16 in full and in compliance with the law.

17 **TWENTY-SIXTH AFFIRMATIVE OR OTHER DEFENSE**

18 (Lack of Substantial Performance and Material Breach on the Part of Plaintiff)

19 As a separate and independent affirmative or other defense to Plaintiff's FAC
20 and each purported cause of action therein, Defendant alleges that Plaintiff is
21 precluded from obtaining the relief sought in the FAC, either in whole or in part,
22 because he has failed to substantially perform, and is in material breach of,
23 contractual obligations, terms, conditions and duties under the policy at issue,
24 thereby precluding the relief sought.

25 **TWENTY-SEVENTH AFFIRMATIVE OR OTHER DEFENSE**

26 (Failure to Satisfy Conditions Precedent)

27 As a separate and independent affirmative or other defense to Plaintiff's
28

1 FAC and each purported cause of action therein, Defendant alleges that Plaintiff's
2 causes of action are barred because he failed to satisfy certain conditions
3 precedent.

4 **TWENTY-EIGHTH AFFIRMATIVE OR OTHER DEFENSE**

5 (Unjust Enrichment)

6 As a separate and independent affirmative or other defense to Plaintiff's FAC
7 and each purported cause of action therein, Defendant alleges that Plaintiff's causes
8 of action are barred because recovery thereon would result in unjust enrichment.

9 **TWENTY-NINTH AFFIRMATIVE OR OTHER DEFENSE**

10 (Ratification/Consent)

11 As a separate and independent affirmative or other defense to Plaintiff's FAC
12 and each purported cause of action therein, Defendant alleges that Plaintiff's causes
13 of action are barred because he acknowledged, ratified, consented to and acquiesced
14 in the alleged acts or omissions, if any, of Defendant, thus barring him from any
15 relief as prayed for in the FAC.

16 **THIRTIETH AFFIRMATIVE OR OTHER DEFENSE**

17 (Speculative Damages)

18 As a separate and independent affirmative or other defense, Defendant
19 alleges that Plaintiff's claim is barred because damages are speculative and
20 therefore not recoverable.

21 **THIRTY-FIRST AFFIRMATIVE OR OTHER DEFENSE**

22 (No representation)

23 As a separate and independent affirmative or other defense, Defendant
24 alleges that it has made no representations to Plaintiff upon which he could have
25 relied.

26 **THIRTY-SECOND AFFIRMATIVE OR OTHER DEFENSE**

27 (Lack of Consideration)

1 As a separate and independent affirmative or other defense, Defendant
2 alleges that any contract between them lacked consideration or was otherwise
3 illusory in the Defendant did not receive goods, service, or value in exchange for its
4 promises under the contract.

5 **THIRTY-THIRD AFFIRMATIVE OR OTHER DEFENSE**

6 (Offset/Setoff)

7 As a separate and independent affirmative or other defense, Defendant
8 alleges that to the extent it is found liable for any damages or amounts, Defendant
9 claims a credit, setoff, or offset for all amounts it paid for the services of Plaintiff,
10 all amounts received by Plaintiff, all amounts advanced or paid to Plaintiff in
11 excess of that to which he was legally entitled, all amounts paid to Plaintiff as
12 premium rates that are not calculated as part of his regular rate, all time that
13 Plaintiff reported as work time that he did not in fact work, and all other goods,
14 amounts, or time that Plaintiff took to which he was not entitled, if any.

15 **THIRTY-FOURTH AFFIRMATIVE OR OTHER DEFENSE**

16 (Quantum Meruit)

17 As a separate and independent affirmative or other defense, Defendant
18 alleges that, to the extent that Plaintiff provided Defendant with any value at all,
19 Plaintiff is only entitled to receive payment for the goods or services actually
20 provided at fair market value.

21 **THIRTY-FIFTH AFFIRMATIVE OR OTHER DEFENSE**

22 (Unconstitutionally Vague)

23 As a separate and independent affirmative or other defense, Defendant
24 alleges, based on information and belief, that the FAC, or portions thereof, are
25 barred because the applicable California Labor Code provisions and wage orders of
26 the Industrial Welfare Commission as applied are unconstitutionally vague and
27 ambiguous and violate Defendant's rights under the Constitution of the United
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1 States of America and the State Constitution of California as to, among other
2 things, due process of law.

3 **THIRTY-SIXTH AFFIRMATIVE OR OTHER DEFENSE**

4 (Frustration of Purpose)

5 As a separate and independent affirmative or other defense, Defendant
6 alleges that an unexpected event or occurrence happened, frustrating the purpose of
7 the contract, such that enforcement of the contract would not allow the parties to
8 each receive the benefit of their bargain.

9 **THIRTY-SEVENTH AFFIRMATIVE OR OTHER DEFENSE**

10 (Innocent Representation)

11 As a separate and independent affirmative or other defense, Defendant
12 alleges that, to the extent Plaintiff alleges that Defendant made a representation-
13 which Defendant denies-the representation was innocent and was not made with
14 knowledge of falsity or recklessness as to the same.

15 **THIRTY-EIGHTH AFFIRMATIVE OR OTHER DEFENSE**

16 (Truthful Representation)

17 As a separate and independent affirmative or other defense, Defendant
18 alleges that, to the extent Plaintiff alleges that Defendant made a representation -
19 which Defendant denies - the representation was truthful when made.

20 **THIRTY-NINTH AFFIRMATIVE OR OTHER DEFENSE**

21 (De Minimis Non-Compensable Activities)

22 As a separate and independent affirmative or other defense, Defendant
23 alleges that if and to the extent Plaintiff can prove that he engaged in any
24 uncompensated work activities, some or all of the time allegedly worked is de
25 minimis (or preliminary or postliminary activity) and thus is not compensable.

26 **FORTIETH AFFIRMATIVE OR OTHER DEFENSE**

27 (Federal Preemption)

1 As a separate and independent affirmative or other defense, Defendant
2 alleges that Plaintiff's claims are barred, in whole or in part, by federal law.

3 **FORTY-FIRST AFFIRMATIVE OR OTHER DEFENSE**

4 (Accord and Satisfaction)

5 As a separate and independent affirmative or other defense, Defendant
6 alleges that the FAC and causes of action asserted therein, in whole or in part, fail
7 to the extent Plaintiff has been fully paid all amounts legally owed to him by
8 Defendant, since by accepting the payments made to him, Plaintiff has effectuated
9 an accord and satisfaction of his claims.

10 **FORTY-SECOND AFFIRMATIVE OR OTHER DEFENSE**

11 (No privity)

12 Defendant alleges that the causes of action alleged in Plaintiff's FAC are
13 barred, because Defendant was not in privity of contract with Plaintiff.

14 **FORTY-THIRD AFFIRMATIVE OR OTHER DEFENSE**

15 (No Prejudice / No Entitlement to Relief Under FMLA or CFRA)

16 As a separate and independent affirmative or other defense, Defendant
17 alleges that the FAC and causes of action asserted therein, in whole or in part, fail
18 to the extent Plaintiff was granted a personal leave of absence and did not suffer
19 any prejudice or actual injury as a result of any alleged violation. *See Ragsdale v.*
20 *Wolverine World Wide, Inc.*, 535 U.S. 81, 89 (2002) ("[FMLA] provides no relief
21 unless the employee has been prejudiced by the violation"); *Sarno v. Douglas*
22 *Elliman-Gibbons & Ives, Inc.*, 183 F.3d 155, 161–62 (2d Cir. 1999) (no right to
23 reinstatement where employee unable to return to work at end of leave period);
24 *Curtis v. Costco Wholesale Corp.*, 807 F.3d 215, 223 (7th Cir. 2015) (no FMLA
25 violation for failure to reinstate where employee was not yet cleared to return).
26
27
28

FORTY-THIRD AFFIRMATIVE OR OTHER DEFENSE

(Lack of Statutory Coverage under FMLA and CFRA)

As a separate and independent affirmative or other defense, Defendant alleges that the FAC and causes of action asserted therein, in whole or in part, fail to the extent Plaintiff was not an eligible employee entitled to coverage under the FMLA or CFRA. At all relevant times, Defendant did not employ the minimum number of employees within the statutory radius necessary for coverage under FMLA or CFRA. Further, Plaintiff did not meet the statutory minimum hours worked requirement to qualify for leave under FMLA or CFRA. Additionally, to the extent Plaintiff was not employed at a California worksite, Plaintiff was not an “employee” as defined by the CFRA and is not entitled to its protections.

FORTY-FOURTH AFFIRMATIVE OR OTHER DEFENSE

(Employment Would Have Ceased Regardless of Leave)

As a separate and independent affirmative or other defense, Defendant alleges that the FAC and causes of action asserted therein, in whole or in part, fail to the extent Plaintiff’s employment would have ended for reasons unrelated to any protected leave. An employee on FMLA or CFRA leave has no greater right to reinstatement or continued employment than if the employee had remained actively employed during the leave period. Defendant would have discharged or otherwise terminated Plaintiff’s employment for legitimate, non-retaliatory reasons even if Plaintiff had not taken any leave, and Plaintiff’s leave was not a reason for his separation from employment.

FORTY-FIFTH AFFIRMATIVE OR OTHER DEFENSE

(Contract Void Due to Fraudulent Inducement)

As a separate and independent affirmative or other defense, Defendant alleges that the FAC and causes of action asserted therein, in whole or in part, fail to the extent any alleged contract between Plaintiff and Defendant is void or

1 unenforceable as it was procured by fraud. Defendant alleges that Plaintiff made
2 material misrepresentations of fact, knowing them to be false, with the intent to
3 induce Defendant to enter into the alleged contract. Defendant reasonably relied on
4 these misrepresentations and would not have entered into the contract had
5 Defendant known the true facts.

6 **FORTY-SIXTH AFFIRMATIVE OR OTHER DEFENSE**

7 (Same Decision)

8 As a separate and independent affirmative or other defense, Defendant
9 alleges that the FAC and causes of action asserted therein, in whole or in part, fail
10 to the extent that even if Plaintiff's protected activity or any disclosure or refusal to
11 participate in any allegedly unlawful act was a contributing factor in any adverse
12 employment action, Defendant would have made the same decision to take such
13 action at the same time for legitimate, independent reasons. Defendant therefore
14 cannot be held liable under Labor Code section 1102.5, for wrongful termination in
15 violation of public policy, or under any other theory of retaliation or wrongful
16 discharge. a

17 **ADDITIONAL AFFIRMATIVE OR OTHER DEFENSES**

18 Defendant has insufficient information upon which to form a belief as to
19 whether it may have additional unstated affirmative or other defenses. Defendant
20 reserves the right to assert additional affirmative or other defenses in the event
21 discovery indicates they are appropriate.

22 WHEREFORE, Defendant requests relief as follows:

- 23 1. That Plaintiff takes nothing by reason of his FAC and that judgment be
24 entered in favor of Defendant as appropriate;
25 2. For costs of suit, including reasonable attorneys' fees; and
26 3. For such other and further relief as the Court may deem proper.

COUNTERCLAIMS

In further response to Plaintiff’s First Amended Complaint (the “Complaint”, DE 10), Defendant Checkmate.com, Inc. (“Defendant” or “Checkmate”) alleges as follows:

NATURE OF THE ACTION

1. **“No matter what.”** These three words, written by Plaintiff Arjun Vasan (“Plaintiff” or “Vasan”) in January 2025, exemplify Plaintiff’s scam giving rise to this action. Plaintiff apparently believed he could ride a wave of investor interest in artificial intelligence (“AI”) to peddle a set of what would turn out to be recycled, cobbled-together software code for much, much more than it was worth. For Plaintiff, the best part about the scheme was that if his extensive duplicity was ever discovered, it wouldn’t matter: he would get himself paid **“no matter what,”** ride off into the sunset with millions of dollars in ill-gotten gains and leave his victims holding the bag.

2. Defendant became Plaintiff’s unsuspecting victim in April 2024, when Plaintiff sought to convince Checkmate to pay millions of dollars to acquire VoiceBite Corporation (“VoiceBite”) – the corporate vehicle for his scam – while falsely claiming that he (and thus VoiceBite) had **exclusive** ownership and authorship of what was represented to be its world-class voice ordering AI technology. Among Plaintiff’s many misrepresentations, Plaintiff represented that VoiceBite was powered by its exclusive software code, which was built from the ground up.

3. The truth was far different. VoiceBite’s technology had not been developed or owned exclusively by Plaintiff. It had been recycled – again and again – through multiple individuals and employers, each with actual and potential claims to the technology contained therein and the assets Checkmate **thought** it had acquired.

1 4. Defendant was unsuspecting, but Plaintiff was not. He knew what he
2 was doing. Plaintiff has admitted, in substance and effect, that he knew VoiceBite’s
3 technology was riddled with repurposed code, unauthored by VoiceBite, and debated
4 with his co-founders whether to disclose his concealment in fear he would be
5 discovered and exposed by Checkmate. However, in order to secure the million-
6 dollar bag and a potential executive role at Checkmate, Plaintiff proceeded with his
7 master plan to defraud Checkmate. Plaintiff made multiple intentional
8 misrepresentations and fraudulent statements to Checkmate knowing that
9 VoiceBite’s ownership of its intellectual property was critical to Checkmate’s
10 interest in acquiring same for the purpose of expanding its technology and
11 supplementing its presence in the voice ordering space within the restaurant industry.

12 5. As with many garden-variety scams, Plaintiff’s “*no matter what*”
13 expectations would ultimately begin to unravel. Checkmate made multiple requests
14 for access to the code, with which Plaintiff failed to comply. Knowing that he would
15 soon be discovered, throughout the summer and fall of 2024, Plaintiff engaged in
16 increasingly unprofessional conduct and inappropriate behavior with his co-workers.
17 All the while, Plaintiff refused to provide Defendant’s engineers and developers with
18 access to the code that he knew was far from what he had represented.

19 6. Checkmate began to uncover the true extent of Plaintiff’s duplicity in
20 fall 2024 and immediately took steps to protect itself under the terms of the parties’
21 transactions and otherwise, making it clear that it was Plaintiff – and not Defendant
22 – that was required to compensate Defendant for the losses caused by his gross
23 misconduct. Plaintiff steadfastly denied any accountability for his fraudulent
24 conduct, vacillating between a series of increasingly absurd excuses to cover up his
25 conduct and excuse his own liability. But Plaintiff knew he wasn’t telling the truth:
26 he has recently admitted that he intentionally concealed his misrepresentations
27 concerning VoiceBite’s technology to Checkmate in part because he allegedly feared
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1 an adverse response from Checkmate – the company paying millions of dollars for
2 supposedly proprietary AI technology.

3 7. Plaintiff clearly thought he had a sweetheart deal. Indeed, Checkmate
4 has learned that he has since attempted to pawn off some of *the same code* to yet
5 another third party in violation of his non-compete agreement. The law, of course,
6 is otherwise: no person is entitled to indemnity against their own fraud and no
7 contract can possibly be interpreted to allow somebody to profit from their own
8 intentional and entirely fraudulent wrongdoing. Plaintiff's inability to recognize
9 these basic truths and compensate Checkmate for the significant harm he has caused
10 has left Checkmate with no choice but to initiate the present action to obtain
11 compensation for that harm.

12 **PARTIES**

13 8. Defendant Checkmate.com Inc. is a corporation organized and existing
14 under the laws of the State of Delaware and maintains its principal place of business
15 at 1113 York Avenue, New York, NY 10065.

16 9. Plaintiff Arjun Vasan, co-founder of VoiceBite, is an individual.. Upon
17 information and belief, Plaintiff has, from time to time, resided with his parents in
18 the State of California and claims to reside with his parents there today.

19 **JURISDICTION AND VENUE**

20 10. This Court has subject-matter jurisdiction under 28 U.S.C. § 1332
21 because it involves parties who are all citizens of different states or foreign entities
22 and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

23 11. This Court has personal jurisdiction over this proceeding because
24 Plaintiff voluntarily consented to this Court's exercise of jurisdiction by bringing his
25 Complaint. Moreover, Defendant has consented to this Court's exercise of
26 jurisdiction by appearing in and litigating this matter.

27 12. Similarly, venue in the Central District of California is proper pursuant
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1 to 28 U.S.C. § 1391(b) as determined in this Court’s Order denying Defendant’s
2 Motion to Dismiss or Transfer (DE 67 at 9:12-11:4). The Court found that “a
3 substantial part of the events giving rise to Plaintiff’s claims ... arose in California.”
4 (*Id.* at 9:19-21.) Defendant’s counterclaims either arise from the exact same events
5 or arise from events taking place in California. Therefore, venue is in the Central
6 District of California is proper under 28 U.S.C. § 1391(b).

7 **FACTUAL BACKGROUND**

8 **I. CHECKMATE ACQUIRES VOICEBITE FOR ITS**
9 **PROPRIETARY CODE**

10 13. Checkmate is a solutions-powered company with enterprise technology
11 and expert 24/7 support that blends its technology and hands-on support to tackle
12 challenges facing restaurants, such as first-party ordering, third-party integrations,
13 menu management, accounting reconciliation, loyalty programs, and more.

14 14. Looking to expand its technology and supplement its presence in the
15 voice ordering space of the restaurant industry, Checkmate sought to acquire
16 VoiceBite. VoiceBite, co-founded by Arjun Vasan, is a customer service-based
17 company which leverages AI to automate the voice ordering process for restaurants.
18 The voice AI space is very early stage but considered to have the potential to be a
19 very large market opportunity, and Checkmate viewed the acquisition of VoiceBite
20 as a way to assume an early leadership position in this nascent business. Plaintiff has
21 previous experience in the voice AI space, as he had founded an earlier startup
22 company called CyborgOps, which was previously acquired in 2022 by Presto
23 Automation.

24 15. With the goal of expanding its voice ordering AI capabilities,
25 Checkmate agreed to acquire VoiceBite, along with its intellectual property, in early
26 2024 by way of the Merger Agreement and related transactional documents
27
28

1 including, but not limited to, Assignment of IP and Other Assets and Non-
2 Competition Agreement (the “Transaction”).

3 16. From the outset, Plaintiff represented himself – and thus VoiceBite – as
4 the owner of proprietary code for VoiceBite’s voice ordering AI application, a key
5 asset material to Checkmate’s decision to pursue the acquisition because it would
6 provide Checkmate with the ability to be a very early mover into the nascent but
7 potentially enormous AI-assisted restaurant ordering space.

8 17. Plaintiff, however, knew VoiceBite’s technology was not the cutting-
9 edge technology he represented. Contemplating whether to reveal the truth of this
10 matter to Checkmate – Plaintiff decided against doing so. He recently claimed to
11 have discussed with his co-founders whether to disclose to Checkmate certain false
12 representations he had made concerning the code. He decided against doing so –
13 concluding that the risk of this fraud being exposed was worth the potential for
14 millions of dollars and an executive role at Checkmate.

15 18. Aligning with his plan to defraud Checkmate, Plaintiff was evasive
16 about allowing Checkmate to review what he claimed to be VoiceBite’s proprietary
17 code. Plaintiff’s evasiveness required Checkmate to obtain from him express
18 representations and warranties regarding the ownership and authorship of
19 VoiceBite’s intellectual property. These included, among others:

- 20 • Plaintiff was “owner, inventor and/or author” of certain assigned
21 intellectual property related to VoiceBite software (namely, a
22 “comprehensive set of components of an AI voice ordering system”)
23 and that such intellectual property was not subject to “any dispute,
24 claim, prior license or other agreement, assignment, lien or rights of any
25 third party” or “any claim of any prior employer or third party client” of
26 Plaintiff;

- 1 • Plaintiff had provided to VoiceBite “all worldwide patents, patent
2 applications, patent rights, copyrights, copyright registrations, moral
3 rights, trade names, trademarks, service marks, domain names and
4 registrations and/or applications for all of the foregoing, trade secrets,
5 know-how, mask work rights, rights in trade dress and packaging,
6 goodwill and all other intellectual property rights and proprietary rights
7 relating in any way to the Technology, any Derivative or any
8 Embodiment, whether arising under the laws of the United States of
9 America or the laws of any other state, country or jurisdiction” related
10 to VoiceBite’s technology;
- 11 • That VoiceBite owned or had valid and enforceable right to use, all
12 intellectual property used or proposed to be used in connection with its
13 business;
- 14 • That neither VoiceBite “nor any of its current or proposed products or
15 services have infringed upon, misappropriated or are currently
16 infringing upon, misappropriating or otherwise violating any
17 Intellectual Property rights of any Person;”
- 18 • That “no source code for any VoiceBite Proprietary Software has been
19 delivered, licensed, or made available” to any person “who is not an
20 employee” of VoiceBite;
- 21 • That Plaintiff had not “omitted to state a material fact necessary in order
22 to make the statements and information contained herein or therein, not
23 misleading;” and
- 24 • That Plaintiff “is not aware of any information necessary to enable a
25 prospective purchaser of VoiceBite” to “make an informed decision
26 with respect to the purchase of such Company Shares or business that
27 has not been expressly disclosed herein.”

1 19. All of these representations were false. Plaintiff knew they were false
2 when he was making them. He also knew that Checkmate was relying on these
3 representations and that these representations were fundamental in Checkmate's
4 decision to proceed with the acquisition of VoiceBite – a deal that closed on April
5 30, 2024.

6 **II. CONCERNED THAT HIS SCHEME WILL UNRAVEL,**
7 **PLAINTIFF REFUSES TO HAND OVER VOICEBITE'S CODE**
8 **AND DEMONSTRATES INCREASING INSTABILITY**

9 20. The closing of the VoiceBite transaction led to Plaintiff's (ultimately ill-
10 fated) employment as an executive with Checkmate. Cracks in Plaintiff's scheme
11 would soon emerge.

12 21. As an initial matter, and critically here, Plaintiff refused to provide
13 Checkmate with the very code at the *heart* of the VoiceBite acquisition. Delay after
14 delay was followed with excuse after excuse – months dragged on without Defendant
15 having access to the code that VoiceBite purportedly owned.

16 22. Throughout, admittedly aware of the misrepresentations he had made,
17 Plaintiff became increasingly nervous. His communications with team members and
18 the public became increasingly erratic and unprofessional. In the fall of 2024,
19 Plaintiff variously alternated between threatening litigation against his colleagues
20 (“You will be hearing from my attorney then”) and bizarrely implying a lack of team
21 morale if he were to leave Checkmate (“In fact the reason I wont quit is *I dont want*
22 *to crush these people's morale. Without me, they are toast and you can ask them.*
23 *They wont believe anymore [sic throughout]*” and “the morale of rhe [sic] voice ai
24 team would be totalt [sic] crushed without me. You are incredibly stupid not to see
25 that anyway”).

26 23. Knowing he was about to be uncovered, in direct contravention of his
27 non-compete agreement, Plaintiff began looking to work at a competing company.
28

1 On or around November 7 and 8, 2024, Plaintiff contacted a competitor of Checkmate
2 and mentioned the possibility of leaving Checkmate and bringing two Checkmate
3 engineers along with him in a potential hire by the competitor. Plaintiff also shared
4 recordings derived from “Cyborg” technology with the competitor. In these emails,
5 Plaintiff explicitly refers to Cyborg as “my earlier company” and alludes to pawning
6 off the *very same code* he sold to Checkmate.

7 **III. DEFENDANT’S DISCOVERY OF PLAINTIFF’S FRAUDULENT**
8 **REPRESENTATIONS**

9 24. The reason for Plaintiff’s erratic and unprofessional behavior as he
10 endeavored to continue his scam would become clear. Checkmate’s review of the
11 code revealed that copyright in the VoiceBite code dated back to as early as **2018**,
12 when Plaintiff was working for and had obligations to *other entities* well before the
13 formation of VoiceBite itself, which was not formed until on or around August 4,
14 2023.

```
15 #!/usr/bin/env python  
16 # -*- coding: utf-8 -*-  
  
17  
18 __author__ = 'Arjun Vasam, Vasam Varadarajan'  
19 __copyright__ = 'Copyright 2018.'
```

20 25. Further investigation established that the code not only predated
21 VoiceBite’s existence but also contained numerous references to “Cyborg” – a
22 reference to *Plaintiff’s previous company, CyborgOps, and a third party with claims*
23 *to the code* – in the VoiceBite application.

24 26. CyborgOPS was a company previously founded by Plaintiff. Echoing
25 Checkmate’s acquisition of VoiceBite, Cyborg’s assets were acquired by Presto
26 Automation, and Plaintiff joined Presto Automation as Head of Voice Innovation
27
28

1 before being terminated in or around April or May of 2023. The code's specific
2 references to "Cyborg" includes at least the following:

- 3 • The *deployment.txt* file, which describes the deployment process for the
4 application, referred to the entire VoiceBite application as "Cyborg."

```
5 sudo passwd cyborg #set password
6 sudo usermod -s /bin/bash cyborg
7 #allow cyborg to sudo into root
8 #usermod -a -G sudo cyborg #by default a group sudo is created with sudo privileges in sudoers file
9 #logout and login as ka
10 #to be able to ssh in as cyborg, your key has to be in .ssh/authorized_keys file in /home/cyborg
11
12 Step5:
13 cd -
14 mkdir git #use this as default dir
15 cd git
16 sudo apt-get update
17 sudo apt-get install git #install git
18 #Now follow section 'steps for deployment'
```

- 12 • The *deepgram.txt* file, which contains credentials for using the
13 Deepgram TTS (text-to-speech), explicitly referenced "Cyborg."

```
14 name: cyborg-ops
15 key: xDx6Cd7rPfNE5WXt
16 secret: bLY6BJ4RIYpFw7mgjgWa9YTFe8TwElw6
```

- 16 • The *env.json* file, which provides configuration settings for the
17 application also contained multiple references to "Cyborg."

```
18 "installDir": "/home/voicebite",
19 "coreAppDir": "platform",
20 "authDir": "/home/voicebite/platform/auth",
21 "googleCreds": "{{ installDir }}/{{ coreAppDir }}/auth/goog.json",
22 "squareApiPrefix": "https://r2d2.friendlycyborg.com/squareapi",
23 "ops_db": "postgresql://cyborg:cyborg23@slash-db-do-user-3934208-0.a.db.ondigitalocean.
24 "recordingDirPrefix": "/var/www/av.voicebite.ai/html",
25 "gclidID": "883344568883-h5n8p9c96tk372afvq5vb332p76t78cn.apps.googleusercontent.com",
26 "certfile": "/etc/letsencrypt/live/av.voicebite.ai/fullchain.pem",
27 "keyfile": "/etc/letsencrypt/live/av.voicebite.ai/privkey.pem",
28 "logDir": "{{ installDir }}/log",
29 "echoDelayInFrames": 1,
30 "nOfWebops": 4
```

- The *Globals.py* file, which manages application-wide configurations, also incorporated references to “Cyborg,” consistent with the *Env.json* structure above.

```
#determine the active based on the hostname (G['active'], G['active'])
G=config
G['portMap'] = portMap
G['activeHostname']=hostname
G['test']=overview['test']
#G['redisPassword'] = G['redisPassword'] == "None" ? None : G['redisPassword']
G['redisPassword'] = None if G['redisPassword'] == 'None' else G['redisPassword']
if 'redis_connection_class' in G:
    if G['redis_connection_class'] == 'redis.SSLConnection':
        G['redis_pool'] = redis.ConnectionPool(host=G['redisHost'], port=G['redisPort'],
        , password=G['redisPassword'],connection_class=redis.SSLConnection)
    else:
        print(f'Unknown redis connection_class: {G["connection_class"]}')
        exit(1)
else:
    G['redis_pool'] = redis.ConnectionPool(host=G['redisHost'], port=G['redisPort'],
    , password=G['redisPassword'],connection_class=redis.SSLConnection)
```

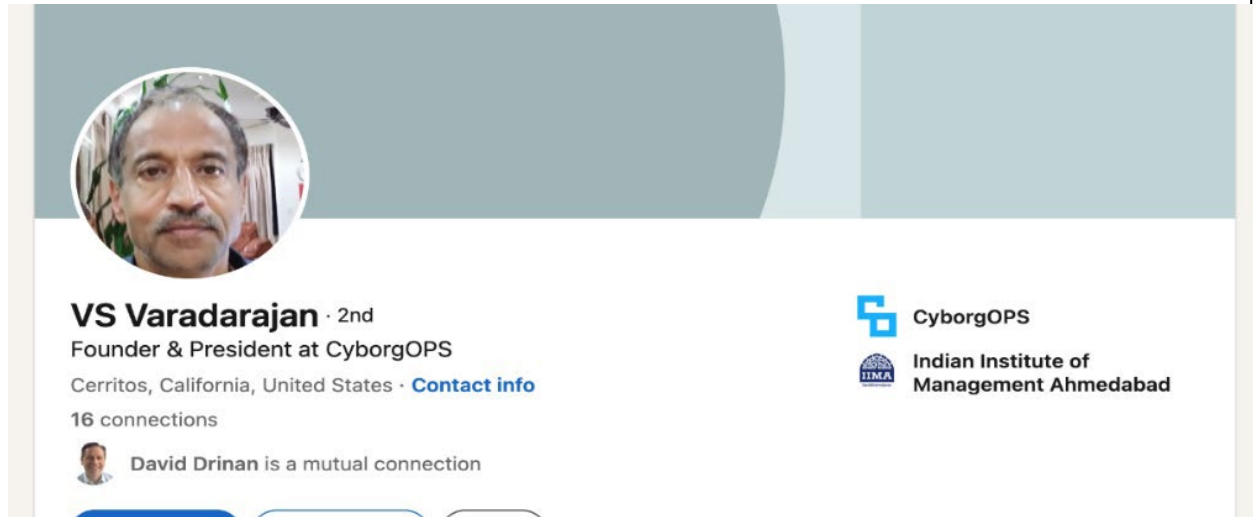
- Even more brazenly, several user interface components within the VoiceBite application had copyright headers that were changed from “CyborgOPS” to “VoiceBite.”



27. Beyond VoiceBite’s application code being unoriginal, previously acquired by another entity, and recycled, Checkmate’s investigation uncovered references to an additional third-party author, “Vasan Varadarajan,” who was a former “Founder & President” of CyborgOPS.


```
#!/usr/bin/env python
# -*- coding: utf-8 -*-

__author__ = 'Arjun Vasan, Vasan Varadarajan'
__copyright__ = 'Copyright 2018.'
```



28. Varadarajan's role was not disclosed in the Transaction, nor was his authorship acknowledged in the representations and warranties made by Plaintiff. However, on or around January 23, 2025, Plaintiff admitted in writing that Varadarajan – *yet another third party with claims to this intellectual property* – had developed the property that Plaintiff falsely claimed to own.

29. The truth was thus becoming clear: Arjun Vasan did not have the rights he claimed to have. And because he did not have rights he claimed to have, he did not and could not assign those rights to VoiceBite, and VoiceBite did not and could not assign those rights to Checkmate: directly contradicting the representations made by Plaintiff.

30. Checkmate confronted Plaintiff with its findings. On December 6, 2024, Checkmate, through counsel, sent a letter to Plaintiff's legal counsel, detailing

1 the discrepancies in the code and how Plaintiff had misled Checkmate into acquiring
2 VoiceBite under fraudulent representations, namely by falsely claiming originality
3 and exclusive ownership of the code.

4 31. Plaintiff's excuses became increasingly bizarre and implausible. He
5 falsely characterized the numerous "Cyborg" references embedded in the VoiceBite
6 application code as merely "incidental" and asserted that "Cyborg" was a commonly
7 used English word. Plaintiff failed to provide any substantive justification for the
8 misrepresentations: "Incidental references to CyborgOps, or use of the common
9 English word 'cyborg,' which I happen to like, and have used for user accounts,
10 passwords and so on for many years, do not constitute material misrepresentation or
11 fraud."

12 32. In January 2025, Plaintiff even went so far as to tell Checkmate that it
13 didn't matter whether or not misrepresentations had been made by him or whether he
14 had committed outright fraud: throughout the transaction, he deliberately sought to
15 negotiate payment from Checkmate to himself "***no matter what***" while all the while
16 hiding the true state of his and VoiceBite's rights.

17 33. In February 2025, Plaintiff's excuses shifted yet again. This time, he
18 claimed that the software, the code – the ***heart*** of VoiceBite – was not, in fact,
19 intellectual property –emphasizing the stark and troubling reality that Checkmate had
20 been duped by Plaintiff into acquiring a valueless non-asset.

21 34. Of course, Checkmate would not have agreed to acquire VoiceBite if its
22 core technology was not, in fact "intellectual property." Plaintiff's
23 misrepresentations regarding the originality and ownership of the code were knowing
24 falsehoods that he told with full awareness of their materiality to Checkmate's
25 decision to acquire VoiceBite.

26 35. Then again in February 2025, Plaintiff brazenly made the excuse that he
27 actually discussed with his co-founders the possibility of disclosing to Checkmate
28

1 the fraudulent representations he made concerning VoiceBite’s AI technology prior
2 to the closing of the VoiceBite transaction but ultimately decided, because of an
3 alleged fear of a hostile reaction from Checkmate, it was better to cause Checkmate
4 to rely on the representations so as to ensure that Checkmate would move forward
5 with the acquisition.

6 36. Plaintiff’s desire to avoid accountability has since devolved into
7 increasingly frequent and explicit threats. For example, on May 5, 2025, Plaintiff
8 wrote to Checkmate’s counsel and said that if Checkmate did not abandon its effort
9 to pursue its rights, he would “*crush*” it, that its counsel’s “*careers will be ruined*,”
10 that he “*will show no mercy*” and that Checkmate should “*give up now, or face the*
11 *fury of a hacker scorned*.”

12 Because I will crush them, and you .. let me be clear. You will be **completely** crushed.

13 Should you persist in your idiocy, your client will be eliminated (entirely), and K&L Gates will be humiliated .. by an insufferable *pro se*. Your careers will be ruined, and I will ensure
14 that the press is well aware.

15 I will show no mercy. None whatsoever. So give up now, or face the fury of a hacker scorned.

16 37. Two days later, Plaintiff sought to retract these statements and claimed
17 that they did “not represent [his] actual intentions, strategy, or approach to this
18 litigation.”

19 CLAIMS FOR RELIEF

20 FIRST CLAIM FOR RELIEF

21 (Breach of Contract of Intellectual Property Acknowledgement and

22 Assignment of IP and Other Assets)

23 38. Checkmate incorporates and re-alleges the preceding paragraphs of this
24 Amended Complaint as if fully set forth herein.

25 39. Checkmate, on the one hand, and Plaintiff, on the other hand, entered
26 into a written Intellectual Property Acknowledgement on April 30, 2024, as part of
27 the Transaction, pursuant to which Plaintiff was prevented from bringing intellectual
28 property owned by or subject to claims by third parties to Checkmate.

1 40. Checkmate as assignee and third party beneficiary of VoiceBite, on the
2 one hand, and Plaintiff, on the other hand, entered into an Assignment of IP and Other
3 Assets on April 30, 2024, as part of the Transaction, pursuant to which Checkmate
4 purchased all worldwide patents, patent applications, patent rights, copyrights,
5 copyright registrations, moral rights, trade names, trademarks, service marks, domain
6 names and registrations and/or applications for all of the foregoing, trade secrets,
7 know-how, mask work rights, rights in trade dress and packaging, goodwill and all
8 other intellectual property rights and proprietary rights relating in any way to the
9 Technology, any Derivative or any Embodiment, whether arising under the laws of
10 the United States of America or the laws of any other state, country or jurisdiction
11 related to VoiceBite's technology.

12 41. Pursuant to the terms of the Intellectual Property Acknowledgement and
13 Assignment of IP And Other Assets agreements, Plaintiff made express
14 representations and warranties concerning the authorship, ownership and originality
15 of the VoiceBite application code.

16 42. The Intellectual Property Acknowledgement and Assignment of IP And
17 Other Assets agreements are valid contracts entered into with consideration.

18 43. Checkmate has fully performed all conditions, covenants and promises
19 required to be performed on its part in accordance with the Intellectual Property
20 Acknowledgement and Assignment of IP And Other Assets agreements except to the
21 extent that its performance was waived, excused or prevented by Plaintiff.

22 44. Checkmate never relieved Plaintiff of his obligations under the
23 Intellectual Property Acknowledgement and Assignment of IP and Other Assets
24 agreements.

25 45. Plaintiff breached the Intellectual Property Acknowledgement and
26 Assignment of IP and Other Assets agreements, including by bringing intellectual
27 property owned and subject to claims by third parties and failing to provide rights to
28

1 VoiceBite's intellectual property as set forth in detail above.

2 46. As a direct and proximate result of Plaintiff's foregoing breaches of
3 contract, Defendant has suffered, and will continue to suffer, damages, including
4 direct, consequential, and incidental losses and lost profits, in an amount to be proved
5 at trial in excess of the jurisdictional minimum of this court.

6 **SECOND CLAIM FOR RELIEF**

7 **(Breach of Contract – Noncompete Agreement)**

8 47. Checkmate incorporates and re-alleges the preceding paragraphs of this
9 Amended Complaint as if fully set forth herein.

10 48. Checkmate and Plaintiff entered into the Non-Compete Agreement, as
11 part of the Transaction, a valid contract entered into with consideration.

12 49. Pursuant to the terms of the Non-Compete Agreement, Plaintiff is
13 prohibited, *inter alia*, from engaging or participating in or acquiring any financial or
14 beneficial interest in any business that competes with Defendant's business of
15 providing AI-powered voice systems for phone answering or for restaurant drive-
16 through voice ordering.

17 50. Checkmate has fully performed all conditions, covenants and promises
18 required to be performed on its part in accordance with the Non-Compete Agreement
19 except to the extent that its performance was waived, excused or prevented by
20 Plaintiff.

21 51. Checkmate never relieved Vasan of his obligations under the
22 Intellectual Property Acknowledgement and Assignment of IP and Other Assets
23 agreements.

24 52. Plaintiff breached the Non-Compete Agreement by, *inter alia*, in
25 November 2024, contacting one or more of Defendant's competitors for the purpose
26 of attempting to solicit interest in acquiring the same code and employees provided
27 to Checkmate as part of the Transaction.

1 53. As a direct and proximate result of Plaintiff's foregoing breaches of the
2 Non-Compete Agreement, Checkmate has suffered, and will continue to suffer,
3 damages, including direct, consequential, and incidental losses and lost profits, in an
4 amount to be proved at trial in excess of the jurisdictional minimum of this court.

5 **THIRD CLAIM FOR RELIEF**

6 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

7 54. Checkmate incorporates and re-alleges the preceding paragraphs of this
8 Amended Complaint as if fully set forth herein.

9 55. The Intellectual Property Acknowledgement and Assignment of IP And
10 Other Assets, and Non-Compete agreements each incorporate a covenant of good
11 faith and fair dealing, which provides that neither party will do anything that will
12 injure the right of the other to receive the benefits of the agreement.

13 56. Plaintiff materially breached the implied covenant of good faith and fair
14 dealing in the Intellectual Property Acknowledgement and Assignment of IP And
15 Other Assets agreements by knowingly and intentionally depriving Checkmate of its
16 rights to obtain benefits under these agreements, making false representations and
17 warranties concerning the VoiceBite application code's original authorship and
18 exclusive ownership, as set forth in detail above.

19 57. As a direct and proximate result of Plaintiff's foregoing breaches of the
20 implied covenants of good faith and fair dealing, Defendant has suffered, and will
21 continue to suffer, damages, including direct, consequential, and incidental losses
22 and lost profits, in an amount to be proved at trial in excess of the jurisdictional
23 minimum of this court.

24 **FOURTH CLAIM FOR RELIEF**

25 **(Fraud)**

26 58. Checkmate incorporates and re-alleges the preceding paragraphs of this
27 Amended Complaint as if fully set forth herein.

1 59. Plaintiff knowingly and intentionally misrepresented that Plaintiff and
2 VoiceBite were the original author and exclusive owner of the VoiceBite application
3 code, by way of numerous representations made to Checkmate throughout the
4 Transaction as detailed above, including the following oral and written
5 misrepresentations:

- 6 • Plaintiff was “owner, inventor and/or author” of certain assigned
7 intellectual property related to VoiceBite software (namely, a
8 “comprehensive set of components of an AI voice ordering system”) and that such intellectual property was not subject to “any dispute,
9 claim, prior license or other agreement, assignment, lien or rights of any
10 third party” or “any claim of any prior employer or third party client” of
11 Plaintiff;
- 12 • Plaintiff had provided to VoiceBite “all worldwide patents, patent
13 applications, patent rights, copyrights, copyright registrations, moral
14 rights, trade names, trademarks, service marks, domain names and
15 registrations and/or applications for all of the foregoing, trade secrets,
16 know-how, mask work rights, rights in trade dress and packaging,
17 goodwill and all other intellectual property rights and proprietary rights
18 relating in any way to the Technology, any Derivative or any
19 Embodiment, whether arising under the laws of the United States of
20 America or the laws of any other state, country or jurisdiction” related
21 to VoiceBite’s technology;
- 22 • That VoiceBite owned or had valid and enforceable right to use, all
23 intellectual property used or proposed to be used in connection with its
24 business;
- 25 • That neither VoiceBite “nor any of its current or proposed products or
26 services have infringed upon, misappropriated or are currently
27
28

1 infringing upon, misappropriating or otherwise violating any
2 Intellectual Property rights of any Person;”

- 3 • That “no source code for any VoiceBite Proprietary Software has been
4 delivered, licensed, or made available” to any person “who is not an
5 employee” of VoiceBite;
- 6 • That Plaintiff had not “omitted to state a material fact necessary in order
7 to make the statements and information contained herein or therein, not
8 misleading;” and
- 9 • That Plaintiff “is not aware of any information necessary to enable a
10 prospective purchaser of VoiceBite” to “make an informed decision
11 with respect to the purchase of such Company Shares or business that
12 has not been expressly disclosed herein.”

13 60. All of these representations were false when made. Plaintiff, who
14 admits in writing that he intended at the time that he would be paid “no matter what,”
15 knew of their falsity and knew that Checkmate would rely on Plaintiff’s material
16 representations and warranties to make decisions, *inter alia*, as to whether to enter
17 into the Merger Agreement with VoiceBite and close same.

18 61. The intentional misrepresentations and fraudulent statements were
19 material and intended to induce Checkmate into paying Plaintiff millions of dollars.
20 The same material, intentional misrepresentations and fraudulent statements were
21 similarly intended to induce Checkmate into relying on Vasan’s representations and
22 warranties during the negotiation process described above.

23 62. Checkmate reasonably and justifiably relied on the intentional
24 misrepresentations and fraudulent statements made by Plaintiff. As a direct and
25 proximate result of Plaintiff’s fraud, Defendant has suffered, and will continue to
26 suffer damages, in an amount to be proved at trial in excess of the jurisdictional
27 minimum of this court.

FIFTH CLAIM FOR RELIEF

(Negligent Misrepresentation)

63. Checkmate alleges this claim in the alternative to its fourth claim for relief and incorporates and re-allege the preceding paragraphs of this Amended Complaint as if fully set forth herein.

64. Plaintiff had a duty to provide Checkmate with truthful and accurate information as part of the Transaction.

65. Plaintiff negligently misrepresented that he and VoiceBite was the original author and exclusive owner of the VoiceBite application code, including by way of the following oral and written misrepresentations of past and existing material facts at the time the misrepresentations were made:

- Plaintiff was “owner, inventor and/or author” of certain assigned intellectual property related to VoiceBite software (namely, a “comprehensive set of components of an AI voice ordering system”) and that such intellectual property was not subject to “any dispute, claim, prior license or other agreement, assignment, lien or rights of any third party” or “any claim of any prior employer or third party client” of Plaintiff;
- Plaintiff had provided to VoiceBite “all worldwide patents, patent applications, patent rights, copyrights, copyright registrations, moral rights, trade names, trademarks, service marks, domain names and registrations and/or applications for all of the foregoing, trade secrets, know-how, mask work rights, rights in trade dress and packaging, goodwill and all other intellectual property rights and proprietary rights relating in any way to the Technology, any Derivative or any Embodiment, whether arising under the laws of the United States of

America or the laws of any other state, country or jurisdiction” related to VoiceBite’s technology;

- That VoiceBite owned or had valid and enforceable right to use, all intellectual property used or proposed to be used in connection with its business;
- That neither VoiceBite “nor any of its current or proposed products or services have infringed upon, misappropriated or are currently infringing upon, misappropriating or otherwise violating any Intellectual Property rights of any Person;”
- That “no source code for any VoiceBite Proprietary Software has been delivered, licensed, or made available” to any person “who is not an employee” of VoiceBite;
- That Plaintiff had not “omitted to state a material fact necessary in order to make the statements and information contained herein or therein, not misleading;” and
- That Plaintiff “is not aware of any information necessary to enable a prospective purchaser of VoiceBite” to “make an informed decision with respect to the purchase of such Company Shares or business that has not been expressly disclosed herein.”

66. Plaintiff had no reasonable grounds to believe that any of the above misrepresentations were true. In fact, as shown above, Vasan could not have had such reasonable grounds, given that he had personal, first-hand knowledge that the above representations were false when made.

67. The negligent misrepresentations were intended to induce Checkmate into relying on Plaintiff’s misrepresentations and warranties during the negotiation process described above.

68. Checkmate justifiably relied on Plaintiff’s negligent

1 misrepresentations. As a direct and proximate result of Plaintiff's negligent
2 misrepresentations, Defendant has suffered, and will continue to suffer damages, in
3 an amount to be proved at trial in excess of the jurisdictional minimum of this court.

4 **SIXTH CLAIM FOR RELIEF**

5 **Declaratory Relief**

6 69. Checkmate incorporates and re-alleges the preceding paragraphs of this
7 Amended Complaint as if fully set forth herein.

8 70. Plaintiff represented in the agreements set forth above and otherwise
9 that he and VoiceBite were the exclusive authors and/or owners of the code forming
10 the basis of VoiceBite's technology and further represented that no representation
11 was made in connection with the Transaction contained any untrue statement of
12 material fact or omitted to state any material fact necessary to make the statements
13 not misleading.

14 71. Through his pervasive breaches of representations and warranties, fraud
15 and other misconduct, Plaintiff breached these obligations, giving rise to
16 Checkmate's right to indemnification and disentitling Plaintiff to further
17 compensation under any relevant agreements.

18 72. Because Plaintiff has failed to comply with Checkmate's demands under
19 the notices of breach and refused to satisfy and/or acknowledge his past, current and
20 future obligations to repay and indemnify Defendant for his misconduct, Defendant
21 reasonably expects that Plaintiff will continue to refuse to comply with his
22 obligations under the relevant agreements – thus creating a real and justiciable
23 controversy as to the rights and legal relations of the parties under the Transaction
24 agreements.

25 73. Because there is an actual controversy relating to the legal rights and
26 duties of the parties under Cal. Code of Civ. Proc. § 1060, Checkmate is entitled to
27 a declaration that Plaintiff is disentitled to further compensation under the parties'
28

1 agreements and relevant law and that Plaintiff is required to indemnify Defendant for
2 losses incurred as a result of the foregoing conduct.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Checkmate prays for judgment against Plaintiff as follows:

5 1. On the First through Fifth Claims for Relief, that Checkmate recover
6 compensatory, consequential, incidental damages, and lost profits in an amount to be
7 proved at trial in excess of the jurisdictional minimum of this Court;

8 2. On the Sixth Claim for Relief, that a declaratory judgment issue that
9 Plaintiff is disentitled to further compensation under the parties' agreements and
10 relevant law and that Plaintiff is required to indemnify Defendant for losses incurred
11 as a result of the foregoing conduct.

12 3. That Plaintiff be ordered to pay punitive and exemplary damages in a
13 sum sufficient to punish and deter him and others from similar wrongdoing;

14 4. That Plaintiff pay to Checkmate the full costs of this action, including
15 attorney's fees, to the fullest extent permitted by the parties' agreements and relevant
16 law;

17 5. That Checkmate recover pre- and post-judgment interest;

18 6. That Checkmate be granted such other and further relief, in law or in
19 equity, to which Defendant may be entitled or as the Court may deem just and proper.

20 **DEMAND FOR JURY TRIAL**

21 Defendant hereby demands a jury trial of all issues in this Complaint so triable.
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23
24
25
26
27
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1 Dated: July 9, 2025

2
3 By: 

Ryan Keech
Gabriel Huey
Stacey Chiu
Rebecca Makitalo

K&L GATES LLP

Attorneys for Defendant
CHECKMATE.COM INC.